

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3536 OF 2020
(The Special Recovery Officer and another Vs. The Divisional Joint
Registrar and others)

Mr.K.J.Suryawanshi, Advocate for the petitioners.
Mr.S.K.Tambe, AGP for respondent No.1.
Mr.G.B.Kingre, Advocate for respondent Nos. 2 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 20/03/2020

PER COURT :

1. This matter was heard on 03/03/2020 and the following order was passed:-

"1. The petitioners are aggrieved by the order dated 5.12.2019, delivered by the Divisional Joint Registrar, Cooperative Societies, Aurangabad, vide which, he had allowed the application filed by respondent Nos. 2 to 4 under Section 154 of the Maharashtra Cooperative Societies Act, without passing any order under Section 154(2A) of the said Act.

2. Prima facie, I find that this case is squarely covered by the judgment delivered by the learned Division Bench of this Court in the matter of Shewalkar Developers Ltd. Nagpur Vs. Rupee Cooperative Bank Limited, Pune [2016 (1) Mh.L.J. 382].

3. Issue notice to the respondents, returnable on 18.3.2020.

This matter shall appear in the Urgent Admissions Supplementary Board.

4. The learned AGP waives service for respondent No. 1 and the learned Advocate waives service for respondent Nos.2 to 4.

5. Until the returnable date in this matter, the impugned order shall stand stayed. Respondent No.1 Shri Yogiraj Surve shall file his affidavit explaining as to why he has ignored Section 154(2A) and has entertained the proceedings under Section 154 of the said Act.

6. Respondent Nos.2 to 4 shall deposit an amount of Rs.5,00,000/- in this Court, on/or before the returnable date, failing which, the petitioners would be at liberty to proceed with the recovery in view of the certificate under Section 101 of the said Act.”

2. On 18/03/2020, again this Court has passed the following order :-

“1. Despite the order dated 03.03.2020, respondent No.1 (Shri Yogiraj Surve), who is present in the Court, has not filed an affidavit as directed. This Court could have initiated action against him. However, Shri Tambe, learned AGP, submits that the affidavit will be drafted and sworn today itself.

2. Stand over to 20.03.2020 (Friday) in the urgent admissions category.

3. Respondent Nos. 2 to 4 shall deposit an amount of Rs.5 lakhs in this Court on or before the said date, in view of the earlier order dated 03.03.2020.”

3. The concerned Divisional Joint Registrar, Co. Op Societies Shri Yogiraj Vasantrao Surve has filed an affidavit contending that the judgment of the learned Division Bench of this Court in Shewalkar Developers (supra) was not brought to his notice and an order of this Court dated 13/04/2012 in WP No.315/2012 indicates that the Divisional Joint Registrar should not insist on 50% deposit of recoverable amount in a revision u/s 154.

4. I find that as the decision of the learned Division Bench of this Court in Shewalkar Developers (supra) was delivered in 2016, the said Law would now be applicable and the Divisional Joint Registrar, Co.Operative Societies, Aurangabad and all such Divisional Joint Registrars in the State of Maharashtra shall take note of Shewalkar Developers (supra).

5. The learned AGP Shri Tambe fairly points out a recent judgment of the learned Single Judge of this Court in Barindra Overseas Pvt.Limited and another Vs. Shilpa Shares and Securities

and others [2019(3) Mh.L.j. 651], wherein it was concluded that 50% amount of the total recoverable amount shall have to be deposited if a protection against recovery is sought.

6. The learned Advocate for the petitioners points out the earliest judgment delivered by this Court in Greater Bombay Co-operative Bank Ltd., Mumbai and another Vs. Dhillon P.Shah and others [2004(1) Mh.L.J.996], which has been followed consistently by this Court and this is reflected in the judgments delivered in Barindra Overseas (supra) and Shri Datta Nagari Sahakari Patsanstha Maryadeet (Chinchwad) Vs. Tanwani Hotels Pvt.Ltd., Kolhapur [2020(1) Mh.L.J. 828].

7. The learned Advocate for the petitioners submits that the amount to be recovered today is about 32,00,000/-. The learned Advocate for respondent Nos. 2 to 4 submits that the amount is exaggerated since the petitioner has applied interest @ 19% p.a., which should have been @ 5% p.a.

8. Considering the above, I find that Respondent No.1/ Divisional Joint Registrar has erred in granting blanket interim protection to respondent Nos. 2 to 4 vide the impugned order dated 05/12/2019.

The said order has been passed in ignorance of the law applicable. So also, these respondents are not willing to deposit even Rs.5,00,000/-, much less 50% of the recoverable amount.

9. In view of the above, this petition is allowed. The impugned order dated 05/12/2019 granting blanket protection to respondent Nos. 2 to 4, stands quashed and set aside.

(Ravindra V.Ghuge, J.)